

December 7, 2001

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON SHORT PLAT APPEAL

SUBJECT: Department of Development and Environmental Services File No. **L00S0037**

TARBOX SHORT SUBDIVISION

Short Plat Appeal

Location: 14251 132nd Avenue Northeast, Kirkland

Appellant: Chuck and Vicki Tarbox, *represented by*
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And

John E. Rubenkonig
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King County: Department of Development and Environmental Services,
Current Planning Division, *represented by*
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DECISION SUMMARY:

Department's Preliminary Recommendation:	Deny
Department's Final Recommendation:	Deny
Examiner's Decision:	Deny

Complete application: September 8, 2000

EXAMINER PROCEEDINGS:

Hearing Opened: November 27, 2001
Hearing Closed: November 30, 2001

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Septic system approval in the Urban Growth Area

SUMMARY:

The short plat appeal is denied.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:**1. General Information:**

Owner/Developer:	Chuck Tarbox 14251 – 132 nd Avenue NE Kirkland, WA 98034
Engineer:	Jim Hart & Associates 220 – 6 th Street Kirkland, WA 98033
STR:	The NE ¼ of Section 21, Township 26 North, Range 5 EWM
Location:	The southwest corner of NE 143 rd Street and 132 nd Avenue NE
Zoning:	R6 SO
Acreage:	1.01 acres
Number of Lots:	2
Density:	0.5 Lots per acre
Proposed Use:	Single-family Residential
Sewage Disposal:	Applicant proposes to use on site sewage disposal system
Water Supply:	Public – Woodinville Water District
Vesting Date:	September 8, 2000

2. On September 8, 2000 Chuck and Vicki Tarbox, through their agent, John Eric Rubenkonig, filed an application with King County Department of Development and Environmental Services to short plat a 1.01 acre parcel into 2 lots. The application was declared complete by DDES for purposes of processing requirements in November, 2000 and was approved on July 13, 2001. Condition no. 3 of the short plat approval requires the project to obtain a public sewer hookup. The Tarboxes have filed a timely appeal of this short plat approval condition. A pre-hearing conference was held on October 18, 2001, with a pre-hearing order issued on October 23, 2001, the public hearing on this appeal was held on November 27, 2001.

3. The Tarbox property is located on the eastern edge of the Kingsgate neighborhood at the southwest corner of the intersection of Northeast 143rd Street and 132nd Avenue Northeast. This neighborhood lies within an island of unincorporated area bounded on the northwest by the City of Kenmore, on the north by the City of Bothell, to the northeast by the City of Woodinville, and on the south by the City of Kirkland. To the east across 132nd Avenue Northeast lie the slopes leading down into the Sammamish River Valley. Since the Sammamish Valley remains in agricultural status, the Tarbox property lies near the eastern boundary of the County's Urban Growth Area.
4. The northern half of the 1 acre site is developed with the Tarbox residence, while the south half remains heavily wooded. Immediately west of the site is Division 5 of Kingsgate Highlands, which is platted at about 4 lots per acre. As described by the level 1 drainage report prepared for Mr. Rubenkönig by Engineer Bob Parrott, "Existing zoning on the site is R6, or 6 units per acre. The property is bounded north and west by previously platted lots of a similar density. To the south is Kamiakin Middle School. To the east are larger lots due to the lack of sanitary sewer and steeper topography."
5. The essential contention of the Tarbox appeal is that, because the Applicant disclosed during the initial stages of the application process an intent to create a two-lot short plat with sewage disposal to be provided by an on-site septic system, the failure of DDES to object to this aspect of the proposal prior to its July, 2001 decision should be regarded as de facto approval of the septic system. The record indicates that the Applicant obtained preliminary Health Department approval of a septic design in May, 2000, well in advance of the short plat application. The record also demonstrates that Mr. Rubenkönig in October, 1999 sent a letter to DDES requesting a voluntary pre-application meeting to discuss the short plat project. The letter mentions that a sanitary sewer is not readily available to the property.
6. What is less clear is the precise degree to which the sewage disposal issue was actually discussed at the pre-application meeting. Mr. Rubenkönig's pre-application meeting request form only identified traffic and access as an issue area in which staff discussion was being requested. Moreover, Mr. Rubenkönig testified that he had no actual recollection at the pre-application meeting of specifically asking whether septic system use would be permitted. In short, while septic use was clearly a topic of interest to the Applicant and his consultants, and a septic design was part of the application package, there is no evidence that this issue was explicitly raised at the pre-application meeting as presenting a question that needed to be answered.
7. After the application was submitted, DDES requested additional information on a variety of topics, but sewage disposal was not among them. The issue of septic disposal did not get flagged as a problem until the spring of 2001, at which time a new set of planners took over the application file. At that point, staff communicated that applicable regulations prohibited approving short plats with septic disposal in the portions of the Urban Growth Area designated for full service. Based on that ordinance interpretation, condition no. 3 requiring a public sewer hookup was appended to the short plat decision.
8. Mr. Tarbox testified to having spent over \$28,000 thus far to pursue his short plat application. This includes more than \$15,000 in King County fees. After issuance of the short plat decision, the Woodinville Water District indicated that the cost of providing Mr. Tarbox with a sewer hookup over a distance of some 1,500 feet would be approximately \$90,000. Mr. Jay Boitano, a builder who is the anticipated purchaser of the newly created short plat lot, suggested that the cost of installing the

sewer line would be somewhere in the vicinity of \$225,000, based on his conversations with individuals in the construction business. In the absence of documentation supporting a higher figure, we find the \$90,000 cost provided by the water district to be the more credible.

9. There are other anomalies in the record as well. First, there is no explanation as to why the Applicant would have to travel 1,500 feet to obtain a sewer hookup in view of the fact that urban density residential development lies immediately adjacent to the Tarbox site to the west. It may be that Kingsgate Highlands Division V lies within a different utility district, but it seems reasonable to surmise that a service hookup could be obtained from that source as well. An even more curious circumstance derives from the fact that in its additional information request DDES asked Mr. Rubenkonig to submit a plat density worksheet. The worksheet submitted by Mr. Rubenkonig demonstrates that the minimum number of dwelling units that can be approved legally on the Tarbox property is 4.74, which if rounded upward results in a 5-lot long plat, and if rounded downward in a short plat consisting of 4 lots.
10. While we have no reason to believe that Mr. Tarbox was aware of the irregularities within his application, it is not credible to assert that an experienced planning consultant like Mr. Rubenkonig could have reasonably believed either that a septic system would be approved in the R6 zone for a short plat or that a short plat of less than 4 lots was legally feasible on this property.

CONCLUSIONS:

1. The negligence and equitable estoppel issues raised by the Appellants' attorney are beyond the scope of this administrative procedure to determine. If the Appellants wish to pursue these issues further, they will be required to bring suit in Superior Court.
2. The argument that the County's requirements for sewage disposal within the Urban Growth Area permit approval of a short plat on the Tarbox property without public sewer service is without merit. It is uncontested that the Tarbox property lies within the full service area designated within the version of the King County Comprehensive Plan in effect at the time the application was submitted. Former Comprehensive Plan policy F-309 requires that all new development in the full service area shall be served by public sewers. A similar provision is found within the 2001 Comprehensive Plan at policy F-239, which provides in pertinent part that all new development within the Urban Growth Area shall be served by public sewers "unless application of this policy to a proposal for a single-family residence on an individual lot would deny all reasonable use of the property."
3. The Comprehensive Plan policies cited above are implemented within Chapter 13.24 of the King County Code. KCC 13.24.136, in the version that existed in 2000, permits temporary use of on-site sewage disposal systems on individual lots in the full service area subject to a number of conditions. KCC 13.24.136A specifies that the Applicant demonstrate that "the requirement to receive public sewer service from the utility is unreasonable or unfeasible at the time of construction", with a further requirement being a showing that "application of the standards of this title would otherwise preclude reasonable use of the property." Subsection B of KCC 13.24.136 contains a separate provision limited to subdivisions and short subdivisions in the service planning area that authorizes the temporary use of community on-site sewage treatment systems.
4. The Tarbox application does not comply with the requirements of KCC 13.24.136 as they existed in the year 2000. Although the approval of the short subdivision may result in the creation of only one new lot, the application itself is for short subdivision development approval and is therefore subject to the restriction that no temporary on-site sewage treatment facilities are permitted in the full service area. Moreover, even if one interpreted a two-lot subdivision as entailing nothing more than the

creation of a new individual lot, the Tarbox application still would not comply with KCC 13.24.136A in that enforcing the requirement for a public sewer hookup would not preclude reasonable use of the property. The Tarbox property can be legally platted at a base density of six lots with a cost of approximately \$90,000 for a sewer hookup to the Woodinville Water District, and likely with a lower cost if it connects to the system serving the subdivision to its west. In terms of the return to be made on a six lot subdivision, such cost is not unreasonable.

5. A similar outcome is reached if one reviews the Tarbox application in the context of KCC 13.24.136 as it was amended within the 2001 Comprehensive Plan update process. As currently written, KCC 13.24.136 eliminates the distinction between full service and service planning areas. Otherwise, the sewage disposal requirements are nearly unchanged. The exemption from public sewer requirements within the Urban Growth Area is now limited to individual lots, and no exception of any kind is provided for short plats. Further, the requirement to demonstrate a denial of all reasonable use is retained. Accordingly under current regulations, the Tarbox short plat would not qualify for an on-site sewage disposal exemption because it is not an individual lot and because denial of all reasonable use has not been demonstrated.

DECISION:

The appeal is DENIED.

ORDERED this 6th day of December.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 6th day of December, to the parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision.

MINUTES OF THE NOVEMBER 27, 2001, PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L00S0037 – TAXBOX SHORT
PLAT

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Greg Borba and Tom Slade. Participating in the hearing and representing the Appellants were Steve Recor, John Rubenkonig, Jay Boitano, and Chuck Tarbox. There were no other participants in this hearing.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES conditions of approval for short subdivision L00S0037 (date of approval July 13, 2001)
- Exhibit No. 2 Service and finance strategy map from 1994, KC Comprehensive Plan (as amended) dated 1998
- Exhibit No. 3 Printout from KC GIS system for APN 212305-9135
- Exhibit No. 4 KCHD preliminary approval for OSS system dated May 8, 2001
- Exhibit No. 5 appellant's "Statement of Appeal" from Jim Hart & Associates, dated August 13, 2001
- Exhibit No. 6 Short Subdivision Application
- Exhibit No. 7 Assessor's Map
- Exhibit No. 8 DDES Report to the Hearing Examiner
- Exhibit No. 9 DDES File for L00S0037
- Exhibit No. 10 Letter from John Rubenkonig, Hart & Assoc. to Harold Vandergriff, DDES, dated October 8, 1999
- Exhibit No. 11 Letter from Bob Bandarra, Woodinville Water District, to Mr. Tarbox, dated October 4, 2001
- Exhibit No. 12 Letter from Tom Slade, DDES to R. N. Parnell Co., dated August 30, 2001
- Exhibit No. 13 King County Certificate of Sewer Availability for file no. L01S0040
- Exhibit No. 14. DDES Notice of Complete Application to Jim Hart & Associates for file no. L00S0037
- Exhibit No. 15 Cassette tape of K.C. Council meeting
- Exhibit No. 16 Memo from Greg Borba, DDES dated November 30, 2001

SLS:gao
shortplt/L00S0037 RPT